

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0060**  
**Sales and Use Tax**  
**For the Periods 2000 and 2001**

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**ISSUE**

**I. Sales Tax—Untaxed Sales of Catalogs and Promotional Items**

**Authority:** IC 6-8.1-5-1; IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-8.1-5-4(a).

Taxpayer protests the calculated amount of the sales tax due.

**II. Use Tax—Untaxed Purchases of Catalogs and Promotional Items Distributed without Charge to Recipients in Indiana**

**Authority:** IC 6-2.5-3-2.

Taxpayer protests the calculated amount of use tax due.

**STATEMENT OF FACTS**

Taxpayer is a wholesaler of janitorial and sanitation supplies. Taxpayer also sells and gives away to customers marketing merchandise, including catalogs, flyers, and printed advertising literature. These are purchased by retail vendors to use in promoting sales to consumers. Taxpayer operates warehouses across the United States, including a distribution center in Indiana. The Department conducted an audit on a best information available basis at Taxpayer's parent headquarters. The Department issued sales and use tax assessments; Taxpayer filed a protest and a hearing was held.

**I. Sales Tax—Untaxed Sales of Catalogs and Promotional Items**

**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana and a retail merchant is required to collect the tax as agent for the state. IC 6-2.5-4-1 defines a retail transaction as the acquisition of tangible personal property for resale to a

customer for consideration. When tangible personal property is transferred to a customer, sales tax is to be calculated and collected.

IC 6-8.1-5-4(a) requires a taxpayer to maintain books and records in a manner that allows the Department review those books and records to determine liabilities and taxes due. IC 6-8.1-5-1(a) authorizes the Department to make a proposed assessment based on the best information available to the Department. The Department issued an best information assessment in this instance. The Audit Summary stated that Taxpayer did not comply with audit requests to produce records regarding the volume of taxable catalog and promotional items sales in Indiana.

For the hearing, Taxpayer submitted two binders of records to substantiate amount due for untaxed sales of catalogs and promotional items. Taxpayer stated that while there is an amount of approximately \$1,444 due for 2001, it disputes the additional assessment by the Department of \$51,087 due for 2000 and \$51,674 due for 2001. Despite the detailed and voluminous documentation submitted to the Department for the hearing and the rationale forwarded at the hearing, the Department does not find the evidence sufficient to rebut the assessment.

### **FINDING**

For the reasons stated above, Taxpayer's protest is denied.

## **II. Use Tax—Untaxed Purchases of Catalogs and Promotional Items Distributed without Charge to Recipients in Indiana**

### **DISCUSSION**

Indiana imposes an excise tax—commonly called the use tax—on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. IC 6-2.5-3-2. Taxpayer distributed printed promotional materials to its customers without charge. Taxpayer had not paid sales tax when it acquired those materials for distribution. For this reason, use tax was due when Taxpayer gave those materials to its customers without charge. Taxpayer is protesting the best information available assessment made by the Department. Despite the detailed and voluminous documentation submitted to the Department for the hearing and the rationale forwarded at the hearing, the Department does not find the evidence sufficient to rebut the assessment.

### **FINDING**

For the reasons stated above, Taxpayer's protest is denied.